

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (CGM)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Debtor.

IRVING H. PICARD, Trustee for the Substantively
Consolidated SIPA Liquidation of Bernard L.
Madoff Investment Securities LLC and the Chapter
7 Estate of Bernard L. Madoff,

Plaintiff,

v.

SOMERS DUBLIN DESIGNATED ACTIVITY
COMPANY and SOMERS NOMINEES (FAR
EAST) LIMITED,

Defendants.

Adv. Pro. No. 11-02784 (CGM)

IRVING H. PICARD, Trustee for the Substantively
Consolidated SIPA Liquidation of Bernard L.
Madoff Investment Securities LLC and the Chapter
7 Estate of Bernard L. Madoff,

Plaintiff,

v.

BNP PARIBAS ARBITRAGE SNC,

Defendant.

Adv. Pro. No. 11-02796 (CGM)

STIPULATION TO SUBSTITUTE PARTY

WHEREAS, on October 27, 2011, Irving H. Picard (the “Trustee”), as trustee for the substantively consolidated liquidation proceeding of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ *et seq.*, and the chapter 7 estate of Bernard L. Madoff, commenced an adversary proceeding in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) against Somers Dublin Limited (“Somers Dublin”) and Somers Nominees (Far East) Limited, Adv. Pro. No. 11-02784 (the “Somers Action”);

WHEREAS, the Trustee’s complaint in the Somers Action seeks to recover from Somers Dublin a transfer made by Harley International (Cayman) Ltd. (“Harley”) on October 22, 2008, in the amount of \$79,999,960 (the “Harley Transfer”), among other transfers;

WHEREAS, on November 3, 2011, the Trustee commenced an adversary proceeding in the Bankruptcy Court against BNP Paribas Arbitrage SNC (“BNP Paribas Arbitrage”), Adv. Pro. No. 11-02796 (the “BNP Paribas Arbitrage Action”), seeking to recover certain transfers that BNP Paribas Arbitrage allegedly received from Harley;

WHEREAS, on November 22, 2016, the Bankruptcy Court issued a Memorandum Decision Regarding Claims to Recover Foreign Subsequent Transfers (the “Bankruptcy Court Decision”) dismissing certain claims to recover subsequent transfers received from, *inter alia*, Harley on grounds of international comity. *See Sec. Inv’r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (SIPC v. BLMIS)*, No. 08-01789 (SMB), 2016 WL 6900689 (Bankr. S.D.N.Y. Nov. 22, 2016);

WHEREAS, the Bankruptcy Court Decision dismissed all claims against Somers Dublin and BNP Paribas Arbitrage;

WHEREAS, on February 25, 2019, the Court of Appeals for the Second Circuit issued an order, *In re Picard*, Case No. 17-2992, 917 F.3d 85 (2d Cir. 2019) (the “Second Circuit Decision”), which, *inter alia*, vacated the Bankruptcy Court Decision;

WHEREAS, on April 23, 2019, the Second Circuit stayed issuance of the mandate in respect of the Second Circuit Decision pending the disposition of a Petition for Writ of Certiorari in the Supreme Court on its decision. *See In re Picard*, Case No. 17-2992 (2d Cir. Apr. 23, 2019), ECF Doc. No. 1503;

WHEREAS, on June 1, 2020, the Supreme Court denied the Petition for Writ of Certiorari, and the Second Circuit subsequently issued the mandate in respect of the Second Circuit Decision and remanded the matter to the Bankruptcy Court for further proceedings. *See In re Picard*, Case No. 17-2992 (2d. Cir. June 1, 2020), ECF Doc No. 1582;

WHEREAS, Somers Dublin and BNP Paribas Arbitrage represent that Somers Dublin received the Harley Transfer solely in its capacity as nominee for the custodian of BNP Paribas Arbitrage, that Somers Dublin had no beneficial interest in the transfer and exercised no dominion or control over it, and that the full amount of the Harley Transfer was remitted to BNP Paribas Arbitrage on October 23, 2008;

WHEREAS, in consideration of these representations, the Trustee agrees to seek recovery of the Harley Transfer from BNP Paribas Arbitrage rather than from Somers Dublin and agrees not to seek recovery of the Harley Transfer from Somers Dublin as part of his claim to recover subsequent transfers in the Somers Action;

WHEREFORE, the Trustee, BNP Paribas Arbitrage, and Somers Dublin (collectively, the “Parties”) hereby agree as follows:

1. The Trustee agrees that he will not pursue his claim to recover the Harley Transfer from Somers Dublin as part of his claim to recover subsequent transfers in the Somers Action;

2. BNP Paribas Arbitrage agrees that the Trustee may amend his complaint in the BNP Paribas Arbitrage Action to add a claim to recover the Harley Transfer from BNP Paribas Arbitrage and that such amendment will relate back to the filing of, and treated as if asserted in, the original complaint; provided, however, that nothing herein shall be deemed consent by BNP Paribas Arbitrage for the Trustee to otherwise amend his complaint in the BNP Paribas Arbitrage Action; and

3. Except as expressly provided herein, this agreement shall not be construed as a waiver of or otherwise affect any other rights, claims, defenses or interests of the Parties in respect of the Somers Action or the BNP Paribas Arbitrage Action.

[Signatures on following page]

<p><u>/s/ Nowell D. Bamberger</u> Nowell D. Bamberger (admitted <i>pro hac vice</i>) CLEARY GOTTLIEB STEEN & HAMILTON LLP 2112 Pennsylvania Avenue, NW Washington, DC 20037 Telephone: (202) 974-1500 E-mail: nbamberger@cgsh.com</p> <p><i>Attorneys for Defendants Somers Dublin Designated Activity Company (f/k/a Somers Dublin Limited) and Somers Nominees (Far East) Limited</i></p>	<p><u>/s/ Torello H. Calvani</u> Oren J. Warshavsky Torello H. Calvani Baker Hostetler LLP 45 Rockefeller Plaza New York, N.Y. 10111 Telephone: (212) 589-4200 E-mail: owarshavsky@bakerlaw.com E-mail: tcalvani@bakerlaw.com</p> <p><i>Attorneys for Irving H. Picard, Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Chapter 7 Estate of Bernard L. Madoff</i></p>
<p><u>/s/ Ari D. MacKinnon</u> Ari D. MacKinnon Cleary Gottlieb Steen & Hamilton LLP One Liberty Plaza New York, N.Y. 10006 Telephone: (212) 225-2000 E-mail: amackinnon@cgsh.com</p> <p><i>Attorneys for Defendant BNP Paribas Arbitrage SNC</i></p>	